IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Bail Appl..No. 4710 of 2007()

[O.R.NO.69/2006 OF PUNALUR EXCISE RANGE]

PETITIONERS/ACCUSED 1 TO 2

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1. SOMARAJAN, AGED 46 YEARS,
S/O. VASU, CHANDAVILA PUTHEN VEEDU,
PATHANAPURAM VILLAGE,
PATHANAPURAM TALUK.

2. ASOKAN @ CHAKKI, AGED 39 YEARS,
S/O. BHASKARAN,
ELLAPPURA CHANDAVILA PUTHEN VEEDU,
PATTITHRIKAL MURI,PATHANAPURAM VILLAGE,
PATHANAPURAM TALUK.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENTS: STATE

STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4710 of 2007

Dated this the 3rd day of August, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under the Kerala Abkari Act. The crux of the allegations against them is that on 27.08.2006 at about 6.30 p.m within the cashew plantation of the Kerala State Farming Corporation, 2,750 litres of wash in 3 tanks [2 X 1,000 + 1 X 750] was found by the excise officials and seized. They had gone to the scene of crime on receipt of prior discreet information that the petitioners had stored the contraband articles there. They also ascertained from a witness - an employee of the Corporation that it was the petitioners who allegedly kept the contraband articles there. Investigation is in progress. The petitioners have a record of several crimes under the Kerala Abkari Act to their credit. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are in no way responsible for the contraband articles found within the plantation of the Corporation. Workers of the Corporation are residing in the locality and it is unjust to raise allegations against the petitioners for the contraband articles found within the property of

the Corporation. It is, in these circumstances, prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that all the available indications convincingly point to the complicity of the petitioners. This is not the occasion to weigh materials in golden scales or even to consider whether all necessary steps have been taken by the investigators in the matter. Powers under Section 438 Cr.P.C are to be invoked sparingly and in exceptional cases that too in aid of justice. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . I am unable to perceive any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The statement of the witness who has already been examined has been read over to me in Court by the learned Public Prosecutor. The contention that the higher officials (including the Asst.Manager of the Kerala State Farming Corporation) have not been questioned has been raised with great vehemence by the learned counsel for the petitioners. I need only say that this is not the occasion to consider such contention meticulously.

4. I am satisfied, in the facts and circumstances of this case that this is an eminently fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail in the regular and ordinary course..

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-